IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.7.2007

CORAM

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

Writ Petition No.8948 of 2001

K.Ramasamy .. Petitioner

Vs.

1. The General Manager
   Tamil Nadu State Transport Corporation Ltd.
   Kovai Division
   Coimbatore 43.

2. The Government of Tamil Nadu
   rep. by its Transport Secretary
   Secretariat
   Fort St.George, Chennai.

3. K.Chellamuthu .. Respondents
   (R3 impleaded by order dated 21.3.2006
   made in WPMP No.6565 of 2006)

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records from the file of the first respondent in Ref.No.257/E3B/52F/P.A.Thu.P1.1/THA.A.Po.KA [KO.K.1]/2001 dated 01.03.2001 and quash the same and further directing the first respondent herein to promote the petitioner as time keeper.

For Petitioner : Mr.Balan Haridas
For Mr.K.Kalyana Sundaram

For Respondent-1 : Mr.J.Om Prakash
For M/s. Rajnish Pathiyil

For Respondent-2 : Mr.M.R.Jothimanian, G.A.(Writs)

For Respondent-3 : Not ready in notice

O R D E R

The writ petition is filed challenging the seniority list prepared by the first respondent for promotion to the post of Time keeper in the first respondent Corporation.

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2.1. According to the petitioner, he was appointed as a Driver in the Tamil Nadu State Transport Corporation, Kovai Division on 24.7.1985 and he has been performing his function as Driver without any blemish on record. At the time when he joined in service, he has qualified only with S.S.L.C. and subsequently, he has acquired Master Degree in Public Administration, Madurai Kamaraj University in the year 1996. Later, he also acquired a Diploma in Industrial Relations and Personnel Management in the year 1998 and Bachelor Degree in General Law in Madurai University in the year 2000.

2.2. In the year 1998, he made a representation to the first respondent requesting him to consider him for promotion to the next post of Time Keeper. By letter dated 6.6.1997, the first respondent informed the petitioner that his application would be considered as and when vacancy arises in the Administrative section. By subsequent letter dated 19.12.1998, the first respondent informed the petitioner that taking into consideration his experience, seniority and educational qualification, he would be considered for the next promotional post.

2.3. On 11.1.2001, the petitioner received a call letter from the first respondent for interview on 18.1.2001 for the post of Time Keeper. On 18.1.2001, the petitioner attended the interview along with eight other persons. However, he was not selected.

2.4. According to the petitioner, the selection to the post of Time Keeper is by way of promotion, based on seniority-cum-merit. However, the third respondent K.Sellamuthu, who was much junior to him, was selected to the post of Time Keeper. It is the case of the petitioner that even though the post of Time Keeper is by promotion, it is actually by way of seniority-cum-merit and while assessing the merit, the first respondent had not done the same in accordance with law. He would state that when the petitioner is more qualified, which he acquired after joining the duty in the first respondent Corporation, the first respondent ought to have considered him for promotion. Aggrieved by the same, the petitioner is challenging the impugned seniority list dated 1.3.2001.

3.1. The first respondent has filed the counter affidavit. While admitting the factual position, as stated above, it is the case of the first respondent that on 18.1.2001, the interview was conducted for the post of Time Keeper and the petitioner also attended the same. Even though the petitioner was senior to the third respondent, the Selection Committee did not recommend the name of the petitioner for promotion because there was a disciplinary case pending against him as per the Charge Memo dated 14.10.2000 for his absence from duty and another one for trip loss. However, no disciplinary proceedings was initiated against the third respondent and on the basis of seniority-cum-merit, he was selected.

3.2. It is the further case of the first respondent that apart from the above charges pending against the petitioner, the petitioner's previous conduct as the Driver was assessed, wherein, it came to be known

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that the petitioner had involved in accident on two occasions, viz. on 3.7.1995 and 31.5.1997, for which, he suffered a punishment of postponement of increment for one year without cumulative effect by order dated 9.12.1996 and stoppage of increment for six months, by order dated 25.5.1998 respectively. Considering the above said factual position, the first respondent had not recommended the name of the petitioner.

3.3. According to the first respondent, the promotion to the post of Time Keeper is given not only based on the seniority, but also on seniority-cum-merit basis and accordingly, selection has been done strictly. Therefore, there is nothing illegal in the order impugned in the writ petition.

4. I have heard the learned counsel for the petitioner as well as the learned counsel for the first respondent and the learned Government Advocate for the second respondent.

5.1. The learned counsel for the petitioner vehemently contends that the seniority always play an important role, while giving promotion on the basis of seniority-cum-merit among the similarly placed persons. If the process of interview is taken into consideration for deciding the merit, it will only result in nepotism and favouritism and that concept has been heavily criticised by various courts.

5.2. In this regard, he would also rely upon the judgment of the Supreme Court rendered in Hargovind Yadav v. Rewa Sidhi Gramin Bank & Ors. [2006 (4) Supreme 673] wherein the Supreme Court has reiterated that even though interview can be held to be an assessment of performance in connection with promotions, the same can be done only to assess the minimum necessary merit. When the procedure of interview adopted does not provide the minimum standard for promotion, but only the minimum standard for interview and the selection is done based on the comparative merit, it is contrary to the Rule of seniority-cum-merit.

6.1. It is true that the interview alone cannot be a basis for assessment of performance and there must be a minimum standard prescribed for promotion and that cannot be done by way of comparative assessment. In the instant case, it is not as if the petitioner as well as the third respondent were compared with regard to their performance. But, the petitioner was denied promotion only on the ground of the assessment of his performance.

6.2. To substantiate the said contention, the first respondent had stated two incidents wherein the performance of the petitioner as Driver, involving in two accidents, for which charges had been framed against him in the year 2000 and punishments had been awarded, were taken into consideration, while assessing the performance of the petitioner. It is only based on such individual assessment, the petitioner was denied promotion.

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7. In the facts and circumstances, I do not think that the first respondent has denied promotion to the petitioner on the basis of the comparative assessment between the petitioner and third respondent. Therefore, I am of the view that there is nothing illegal in the impugned seniority list.

8. In the light of the above, I do not find any merit in the writ petition and the writ petition deserves to be dismissed and the same is dismissed. However, it is made clear that since the punishment period in respect of the petitioner has already come to an end and undoubtedly, the petitioner is a senior person working as Driver from the year 1985, it is open to the first respondent to consider the petitioner for promotion to the next post as and when the vacancy arises, in accordance with law.

The writ petition is dismissed with the above observation. No costs. Consequently, WMP No.12693 of 2001 is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kpl

To
1. The General Manager
   Tamil Nadu State Transport Corporation Ltd.
   Kovai Division
   Coimbatore 43.

2. The Transport Secretary
   Secretariat
   Fort St.George, Chennai.

+ 1 CC To Mr. M.Kalyana Sundaram, Advocate SR NO.44224

+ 1 CC To M/s.Rajnish Pathiyil, Advocate SR NO.44031

W.P.No.8948 of 2001.

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